IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 193 OF 2005

Shamrock Industrial Co. Ltd. & Ors. .. Petitioners
V/s.
Haleyon Lab (P) Ltd. & Ors. .. Respondents

Mr. Shirish Gupte with Mr. M. Akram i/b. M/s. Harilal Thaker & Co. for the Petitioners
Mr. Sanjog S. Parab for the Respondent No. 1.
Mr. A.M. Shinganpurkar, APP. for the State.

CORAM : V.M. KANADE, J.
DATED : 29TH APRIL, 2005

P.C.:-

1. Heard the learned counsel for the Petitioner and the learned counsel for the Respondents. The Petitioner is challenging the issuance of process by the Additional Chief Metropolitan Magistrate 5th Court at Dadar on complaint filed by the Respondents under section 138 of the Negotiable Instruments Act.

2. It is submitted on behalf of the Petitioner that there was no existing debt or liability in respect of post dated cheque no. 223588 dated 10.3.2000, which was handed over by the Petitioner to the first Respondent. It was submitted that since there was no existing debt or liability, which was legally enforceable, complaint itself was not maintainable. It was submitted that after a letter of credit is issued and it is accepted by the other party, post dated cheque towards security of the letter of credit prior to the issuance of the same, in that behalf after the letter of credit is accepted, the post dated cheque, can not be acted upon and the

cheque, therefore, becomes non-est. In support of the said statement, the learned counsel has taken me to the facts and circumstances of the present case and has also invited my attention to the Suit which was filed by the Respondent in this respect against the Dena Bank Ltd. It is submitted that the singular prayer made in the Suit is that the amount of Rs. 38,26,000/- should be ordered to be paid to Plaintiff together with interest @ 18% per annum. It is submitted by the learned counsel for the Petitioner that the Complainant has also made averments in the said complaint that the post dated cheques would be issued as a security prior to acceptance of the letter of credit. The learned counsel has invited my attention to paragraph nos. 4,5, 6,9 and 10 of the said complaint and has submitted that this was insufficient to establish that the letter of credit was accepted by the Respondent complainant and, therefore, there was no question of depositing the post dated cheque. He, further submitted that the complainant had not only invoked the letter of credit but had also deposited the post dated cheques in the Bank and on that basis the cheques were dishonoured and complaint was filed under section 138 of the Negotiable Instruments Act against the Petitioners.

3. The learned counsel for the Respondent has vehemently opposed the submissions made by the learned counsel for the Petitioner. The Respondents have filed a short affidavit in reply, stating their averments.

The averments made in the Petition have been denied and it was submitted that question was a question of fact, which should be established only after the evidence is adduced in the Trial Court.

4. The submission made by the learned counsel for the Respondents, the question whether in fact the said cheques were given as a security towards the letter of credit and whether in fact there was an agreement between the parties that after the acceptance of letter of credit the post dated cheques would become non-est the question can not be gone into by this Court while exercising it's inherent powers under section 482 of the Code of Criminal Procedure. In the Plaint also there is a specific averment made in paragraph 5, which reads as under:-

> "5. Due to good business relationships and personal request made by the Defendant No. 2, the Plaintiffs, in order to accommodate the Defendant No. 2 acceded to the request and vide its letter dated 22.02.2000 agreed to accept post dated cheques. Pursuant to this, the 2nd Defendants vide a letter dated 02/03/2000 issued a post dated cheque dated 10.03.2000 drawn on Citi Bank. The 2nd Defendants confirmed that the Plaintiffs would not be asked to hold on the cheque or not to deposit the post dated cheque and further undertook to honour the cheque when presented for payment on the stipulated date. On this undertaking from the 2nd Defendants, the Plaintiffs on 02.03.2000 delivered the aforesaid goods i.e. 1500 kg. worth Rs. 47,63,250/- according to the purchase order. Hereto annexed and marked as **Exhibits "B" and "C"** are copies of the Letters dated 22/02/2000 and 02/03/2000 respectively. The 2nd Defendant duly received and accepted the said goods without any complaint/objection. Copies of the documents evidencing delivery of 1500 kg of the said goods are **Exhibit "D1 to D4"** collectively hereto."

Pursuant to this, the Second Defendants vide letter

dated 03.02.2000 issued a post dated cheque dated 10.3.2000 drawn on City Bank. The second Defendant confirmed that the Plaintiffs would not be asked to hold on the cheques or not to deposit the post dated cheques and further undertook to honour the cheque when presented for payment on the stipulated dated. On this undertaking from the second defendants, the Plaintiffs on 2.3.2000 delivered the aforesaid goods i.e. 1500 kg. worth Rs. 47,63,250/- according to the purchase order. From this submission, it can be seen that the contentions of the learned counsel for the Petitioner is that the cheques in question were agreed to be paid after the acceptance of the credit does not prima facie, appear to be correct. A specific averment have been made by the complainant in the Suit filed by them in paragraph 5 of the said Suit.

5. Under the circumstances, the Criminal Writ Petition is rejected. However, it is made clear and clarified that all the questions raised in this Petition are kept open and the Trial Court shall not be influenced by the observations made by this Court while deciding this Criminal Writ Petition. The Trial Court shall decide the submission made in this behalf after evidence is adduced by both the parties on merits and in accordance with law.

(V.M. KANADE, J.)